IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.2435 of 1999

M/s.S.B.Steels,
rep. by its Partner,
Shanthi Tantia,
No.6-A, Cheran Nagar,
Coimbatore. .. Appellant

Vs.

1. The Collector of Central Excise,
   Coimbatore.

2. The Asst. Collector of Central Excise,
   Pollachi, Coimbatore District.

3. The Superintendent of Central Excise,
   Podanur Range, Coimbatore. .. Respondents

Appeal under Clause 15 of the Letters Patent, against the order of the learned Single Judge passed in W.P. No.8353 of 1991 dated 18.02.1999. This petition filed under Article 226 of the constitution of India to issuance a writ of certiorari, calling for the records of the proceedings of the Superintendent of Central Exise, Podanur Range in O.C.No.1083/91 dated 2.5.91 and OC.No.2094/91. dated 20.5.91 and quash the same.

For Appellant : Mr.M.Muthappan

For Respondents: No appearance

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JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed against the order of the learned Single Judge passed in W.P.No.8353 of 1991 dated 18.02.1999.

2. The brief facts arising out of this Writ Appeal are as under:

The appellant is a partnership firm, having its Office at Coimbatore. The petitioner firm was manufacturing M.S.Bars, M.S.Angles, M.S.Plates classified under sub-headings 7209.90, 7210.10 and 7209.10 respectively of the Schedule to the Central Excise Tariff. The petitioner was not manufacturing goods during the relevant period, that attracted excise duty and hence there is no need for the appellant to obtain the Excise License. On 01.04.1987, the petitioner leased out its plant, machinery and building to M/s.Modern Steel Industries, Coimbatore for manufacture of the above items. The said lease period was for a period of three years and the said period came to an end on 01.04.1990. On the expiry of the said period of lease, the lessee M/s.Modern Steel Industries surrendered the possession of the plant, machinery and building to the appellant on 10.01.1991. After taking over the possession of the plant, machinery and building from the lessee, the appellant made arrangements for running the factory itself and for the same, the appellant firm wrote a letter dated 20.04.1991 to the Superintendent, Central Excise, Podanur Range, Coimbatore, the above mentioned third respondent, stating its intention to resume manufacture in the said factory. The appellant received a communication dated 02.05.1991 from the Superintendent of Central Excise, Podanur Range, the third respondent, that, by the second respondent's order dated 07.02.1991, the plant and machinery in the premises were detained under Rule 230(1) of the Central Excise Rules. By virtue of the Detention Order, the lessee had no right to handover the plant and machinery to the appellant unless a sum of Rs.2,82,201.57 towards duty liability of the lessee M/s.Modern Steel Industries and penalty of Rs.2000/- is paid and hence the appellant is not entitled for the license. A further communication dated 20.05.1991 was received from the third respondent by which it was stated that if the appellant fails to pay the the arrears of lessee, action would be initiated against the appellant. Aggrieved by the letters dated 02.05.1991 and 20.05.1991 of the third respondent, the petitioner preferred a writ petition in W.P.No.8353 of 1991 and the same was dismissed by order of the learned Single Judge on 18.02.1999.

3. Learned counsel for the appellant submitted that the appellant is not subject to pay duty in respect of the liability of the lessee and such liability arose out of manufacturing, alleged to have been made by the lessee M/s.Modern Steel Industries. Hence the same cannot be imposed on the appellant, the lessor. Further it is submitted that there was a

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lease in favour of M/s.Modern Steel Industries and after the expiry of lease, the plant and machinery were handed over to the appellant as early as 10.01.1991 and thereafter, the said lessee had no interest in the plant and machinery and hence the detention of the plant and machinery is wrong, illegal, without basis and justification. It is also submitted that there was no proper opportunity given to the appellant before passing the detention order and the detention order was passed when the lessee was not in possession of the plant and machinery. It is also further contended that this is not a case where the previous firm M/s.Modern Steel Industries was taken over by the appellant as a new Management and this is only a case where the appellant wants to carries on manufacturing activity of its own and hence the liability of the lessee would not be imposed on the appellant.

4. There is no representation on behalf of the respondents.

5. Heard the counsel. The lessee, M/s.Modern Steel Industries, having its factory at Myleripalayam, Coimbatore, was manufacturing iron and articles of iron. By order dated 25.08.1989, the Additional Collector of Central Excise, Coimbatore demanded duty of Rs.2,82,201.57 from M/s.Modern Steel Industries in respect of wrong availment of the benefit under Notification No.208/83. On 07.02.1991, the Assistant Collector of Central Excise, Pollachi, the above mentioned second respondent, ordered detention of goods and Plant & Machinery under Rule 230 of Central Excise Rules, 1944. On 13.02.1991, the detention order was executed by the Superintendent of Central Excise, the above mentioned third respondent, and a copy of the detention Mahazar was served on the partner of M/s.Modern Steel Industries, who was present at the time of detention at the factory. The lessee, M/s.Modern Steel Industries, also filed W.P.No.4830 of 1991 and this Court, dismissed the writ petition, confirming the detention order passed by the Assistant Collector on 10.04.1991. After the dismissal of the said writ petition, within ten days, the appellant sent a letter to the Superintendent of Central Excise, the above mentioned third respondent on 20.04.1991 stating that the building, plant and machinery under detention are the properties of M/s.S.B.Steels, and M/s.Modern Steel Industries was only the lessee and that the lease period had already expired on 01.04.1990. In view of the expiry of lease period, the appellant had taken possession of the properties on 10.01.1991, which was before the date of detention order. The counter affidavit was also filed by the respondents in the impugned writ petition denying all the allegations wherein it was made clear that, only to circumvent the detention order dated 07.02.1991 and the subsequent refusal of this Court to interfere with the detention order, the appellant and the lessee, M/s.Modern Steel Industries, have devised a theory of leasing of the factory.

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6. It is evident from the records that both the lessor, the appellant, as well as the lessee, M/s.Modern Steel Industries, had not disclosed all these facts before the Court at the time of contesting the Assistant Collector's detention order in the earlier writ petition in W.P.No.4830 of 1991. It is not in dispute that the appellant as well as the lessee, had not produced any documents or evidence to show that there was a lease transaction between them before any of the authorities. If there was a lease transaction, they should have produced the same before the Superintendent of Central Excise. Alleging that there was a lease transaction is nothing but an after-thought. It is seen that, when the detention mahazar was passed and served on one of the partners of M/s.Modern Steel Industries, the building, plant and machinery were in possession of the lessee on the date of passing of the detention order. If actually there was a lease and expiry of the lease at the time of passing the detention order, the said lessee would have definitely disclosed about the alleged leasing of the factory and also handing over of the plant and machinery after the lease period, to the Revenue Authorities, the above mentioned respondents. They have not disclosed anything about the leasing out of the factory and also they have not said anything about it at the time of contesting the detention order passed by the Assistant Collector in the writ petition filed by the lessee in W.P. No.4830 of 1991. Even in the above writ petition, the appellant herein has failed to bring to the notice of the Court regarding the surrender of building, plant and machinery on 10.01.1991, in favour of the appellant herein. In the present writ appeal as well as in the earlier writ petition filed by the lessee, the fact remains that no one made any statement regarding the said surrender on 10.01.1991. On these facts, the learned Judge is right in holding that the said lease transaction does not appear to be a bonafide one and the transaction is bogus and an after-thought. The learned Single Judge also considered the scope of Rule 230 of Central Excise Rules and further held that no legal document evidencing the ownership of the factory as on the date of detention was produced, either at the time of passing the detention order under Rule 230 of Central Excise Rules on 13.02.1991 or at the time of contesting the detention order by the lessee in W.P.No.4830 of 1991. Further the learned counsel for the appellant did not make any contention in respect of limitation as per Section 11A of the Central Excise Act, 1944 and also it is seen from the grounds that no specific ground was taken by the appellant eventhough the same was argued before the learned Single Judge. The reasons given by the learned Single Judge are based on valid materials and evidence and hence there is no error or legal infirmity in the impugned order.

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7. In view of the foregoing reasons, we are of the view that the order passed by the learned Single Judge is in confirmity with law and the same does not require interference. Accordingly, the writ appeal is dismissed. No costs. Consequently, C.M.P.No.20503 of 1999 is closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Collector of Central Excise,
   Coimbatore.

2. The Asst. Collector of Central Excise,
   Pollachi, Coimbatore District.

3. The Superintendent of Central Excise,
   Podanur Range, Coimbatore.

+1 cc to Mr.MMuthappan, Advocate Sr.No.20237.

VRK(CO)
dcp/12.4.07

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